

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

LORENZO MORENO,

Plaintiff,

v.

PEACE OFFICERS et al.,

Defendants.

3:14-cv-533-RCJ-VPC

**ORDER**

Plaintiff, who is a prisoner in the custody of Lake's Crossing Center<sup>1</sup>, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*. (ECF No. 1-1, 7). The matter of the filing fee shall be temporarily deferred. The Court now screens Plaintiff's civil rights complaint pursuant to 28 U.S.C. § 1915A.

**I. SCREENING STANDARD**

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by

<sup>1</sup> Lake's Crossing Center is a state-run mental health facility under the administration of the Nevada Department of Health and Human Services Division of Public and Behavioral Health. See Organizational Chart at <http://health.nv.gov/PDFs/Organization%20Charts/2014/DPBHOversviewAdministration.pdf>.

1 a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

2 In addition to the screening requirements under § 1915A, pursuant to the Prison  
3 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the allegation  
4 of poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which  
5 relief may be granted, or seeks monetary relief against a defendant who is immune from such  
6 relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which  
7 relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court  
8 applies the same standard under § 1915 when reviewing the adequacy of a complaint or an  
9 amended complaint. When a court dismisses a complaint under § 1915(e), the plaintiff should  
10 be given leave to amend the complaint with directions as to curing its deficiencies, unless it  
11 is clear from the face of the complaint that the deficiencies could not be cured by amendment.  
12 See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See *Chappel*  
14 *v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a  
15 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the  
16 claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.  
17 1999). In making this determination, the court takes as true all allegations of material fact  
18 stated in the complaint, and the court construes them in the light most favorable to the plaintiff.  
19 See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se*  
20 complainant are held to less stringent standards than formal pleadings drafted by lawyers.  
21 See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does not  
22 require detailed factual allegations, a plaintiff must provide more than mere labels and  
23 conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation  
24 of the elements of a cause of action is insufficient. *Id.*

25 Additionally, a reviewing court should "begin by identifying pleadings [allegations] that,  
26 because they are no more than mere conclusions, are not entitled to the assumption of truth."  
27 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "While legal conclusions can provide the  
28 framework of a complaint, they must be supported with factual allegations." *Id.* "When there

1 are well-pleaded factual allegations, a court should assume their veracity and then determine  
2 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a  
3 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the  
4 reviewing court to draw on its judicial experience and common sense.” *Id.*

5 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua*  
6 *sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This includes  
7 claims based on legal conclusions that are untenable (e.g., claims against defendants who are  
8 immune from suit or claims of infringement of a legal interest which clearly does not exist), as  
9 well as claims based on fanciful factual allegations (e.g., fantastic or delusional scenarios).  
10 See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); see also *McKeever v. Block*, 932 F.2d  
11 795, 798 (9th Cir. 1991).

## 12 II. SCREENING OF COMPLAINT

13 In the complaint, Plaintiff sues multiple defendants for events that took place while  
14 Plaintiff was incarcerated at Lake’s Crossing Center. (ECF No. 1-1 at 1). Plaintiff sues  
15 Defendants Christopher Welsh, Peace Officers, Officials, Nurses, and Correctional Officer  
16 Technology. (*Id.* at 2-3). Plaintiff alleges two counts and seeks monetary damages. (*Id.* at  
17 5).

18 The complaint alleges the following: Plaintiff’s constitutional rights have been violated  
19 and continue to be violated by peace officers, nurses, and Technology. (*Id.* at 3). Plaintiff has  
20 been and is “suffering [from] serious physical injuries.” (*Id.*). Plaintiff is “messed up” in the  
21 head and cannot read, write, or spell. (*Id.*). Plaintiff is not the same and “Tom” is lying and  
22 making false information in the paper work. (*Id.*). Peace officers have been violating Plaintiff’s  
23 constitutional rights for seven months. (*Id.* at 4). Plaintiff was physically assaulted one time  
24 by peace officers and now Plaintiff is suffering from serious physical injuries. (*Id.*). Plaintiff  
25 cannot take such pain to his head and body. (*Id.* at 5). Plaintiff cannot concentrate because  
26 of Technology. (*Id.*).

27 The Court finds that Plaintiff may be attempting to allege an Eighth Amendment  
28 excessive force claim based on a possible assault by Technology. However, the Court finds

1 that Plaintiff fails to state a claim at this time because the complaint is unclear as to who  
2 assaulted Plaintiff, how Plaintiff was assaulted, and what injuries Plaintiff suffered as a result  
3 of the assault. The Court grants Plaintiff leave to amend this claim.

4       Upon amendment, Plaintiff should take note of the following law: When a prison official  
5 stands accused of using excessive physical force in violation of the cruel and unusual  
6 punishment clause of the Eighth Amendment, the question turns on whether force was applied  
7 in a good-faith effort to maintain or restore discipline, or maliciously and sadistically for the  
8 purpose of causing harm. *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992) (citing *Whitley v.*  
9 *Albers*, 475 U.S. 312, 320-21 (1986)). In determining whether the use of force was wanton  
10 and unnecessary, it may also be proper to consider factors such as the need for application  
11 of force, the relationship between that need and the amount of force used, the threat  
12 reasonably perceived by the responsible officials, and any efforts made to temper the severity  
13 of a forceful response. *Hudson*, 503 U.S. at 7. Although an inmate need not have suffered  
14 serious injury to bring an excessive force claim against a prison official, the Eighth  
15 Amendment's prohibition on cruel and unusual punishments necessarily excludes from  
16 constitutional recognition *de minimis* uses of physical force. *Id.* at 9-10.

17       Plaintiff is granted leave to file an amended complaint to cure the deficiencies of the  
18 complaint. If Plaintiff chooses to file an amended complaint he is advised that an amended  
19 complaint supersedes the original complaint and, thus, the amended complaint must be  
20 complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542,  
21 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was named in the original complaint  
22 is irrelevant; an amended pleading supersedes the original"); see also *Lacey v. Maricopa*  
23 *Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a  
24 plaintiff is not required to reallege such claims in a subsequent amended complaint to preserve  
25 them for appeal). Plaintiff's amended complaint must contain all claims, defendants, and  
26 factual allegations that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff must file  
27 the amended complaint on this Court's approved prisoner civil rights form and it must be  
28 entitled "First Amended Complaint." Upon amendment, the Court directs Plaintiff to follow the

1 directions in the form complaint and “[s]tate the facts clearly, in your own words, and without  
2 citing legal authority or argument . . . describe exactly what each specific defendant (by name)  
3 did to violate your rights.”

4 The Court notes that if Plaintiff chooses to file an amended complaint curing the  
5 deficiencies outlined in this order, Plaintiff shall file the amended complaint within 30 days from  
6 the date of entry of this order. If Plaintiff chooses not to file an amended complaint, the Court  
7 will dismiss this action without prejudice.

### 8 **III. CONCLUSION**

9 For the foregoing reasons, IT IS ORDERED that a decision on the application to  
10 proceed *in forma pauperis* (ECF No. 7) is deferred.

11 IT IS FURTHER ORDERED that the Clerk of the Court shall file the complaint (ECF No.  
12 1-1).

13 IT IS FURTHER ORDERED that the complaint is dismissed in its entirety, without  
14 prejudice, with leave to amend for failure to state a claim.

15 IT IS FURTHER ORDERED that if Plaintiff chooses to file an amended complaint curing  
16 the deficiencies of his complaint, as outlined in this order, Plaintiff shall file the amended  
17 complaint within 30 days from the date of entry of this order.

18 IT IS FURTHER ORDERED that the Clerk of the Court shall send to Plaintiff the  
19 approved form for filing a § 1983 complaint, instructions for the same, and a copy of his  
20 original complaint (ECF No. 1-1). If Plaintiff chooses to file an amended complaint, he must  
21 use the approved form and he shall write the words “First Amended” above the words “Civil  
22 Rights Complaint” in the caption.

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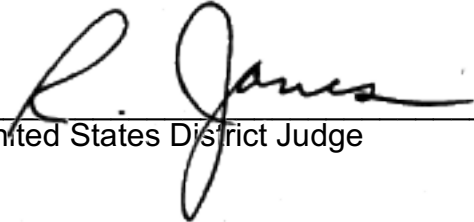
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1 IT IS FURTHER ORDERED that if Plaintiff fails to file an amended complaint curing the  
2 deficiencies outlined in this order, this action will be dismissed without prejudice.

3 Dated: This 19th day of February, 2015.

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United States District Judge  
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